JD–78–99
Philadelphia, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMMONWEALTH COMMUNICATIONS, INC.

and **Case No. 4-CA-25782**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 98, AFL-CIO-CLC

Peter C. Verrochi, Esq., for the General Counsel
Jerome A. Hoffman, Esq. and Matthew Lee Weiner, Esq., for Respondent
Stephen J. Holroyd, Esq., for the Charging Party

DECISION

Statement of the Case

MARGARET M. KERN, Administrative Law Judge. This case was tried before me on December 8, 1998 in Philadelphia, Pennsylvania.[1] The complaint, which issued on May 29, 1998 was based upon an unfair labor practice charge and an amended charge filed on February 27 and March 6, 1997 by the International Brotherhood of Electrical Workers, Local 98, AFL-CIO-CLC (Local 98 or the Union) against Commonwealth Communications, Inc. (Respondent). It is alleged that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with requested information. For the reasons set forth herein, I recommend dismissal of the complaint.

Findings of Fact

I. Jurisdiction

Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] The General Counsel's unopposed motion to correct the transcript is hereby granted.

III. The Facts

A. *Background*

Respondent is engaged in the business of providing local telephone and telecommunications services and installing telephone communications equipment at locations in Pennsylvania and New Jersey. Since 1981, the Communications Workers of America (CWA) has been the collective bargaining representative of Respondent's installation, maintenance and service employees. Respondent and the CWA have been party to a series of collective bargaining agreements, including agreements effective 1993-1996 and 1996-1999. Prior to the events herein, the CWA agreement covered all of Respondent's employees and Respondent did not regularly employ electricians.

Respondent maintains that the CWA is the 9(a) representative of its employees. The recognition clause contained in each negotiated collective bargaining agreement reads as follows:

> The company hereby recognizes the officers and agents of the [CWA] as the exclusive collective bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, for its Installation, Maintenance and Service employees, but specifically excluding clerical employees; also confidential, professional and supervisory employees as defined in the Labor-Management Relations Act of 1947, as amended.

Neither the General Counsel nor the Charging Party challenged Respondent's assertion of the CWA's 9(a) status at the hearing or in their briefs. I therefore find, based upon the evidence, that that the CWA has been, at all times relevant herein, the 9(a) representative of Respondent's employees in the described unit.

B. *Local 98's collective bargaining agreements*

Local 98 is party to a Commercial Agreement with the Philadelphia Division of the Penn-Del-Jersey Chapter of the National Electrical Contractors' Association. The relevant Commercial Agreements in this case were effective from May 1, 1994 to April 20, 1997, and from May 1, 1997 to April 20, 2000. The agreements provide that they continue in effect from year to year unless changed or terminated upon written notice at least 90 days prior to the expiration of the agreements.[2]

The 1994-1997 Commercial Agreement contained the following language at Section 2.09:

> The Employer agrees that, if it has not previously done so, it will recognize the Union as the exclusive collective bargaining agent for all employees performing electrical work within the jurisdiction of the Union on all present and future job sites, if and when a majority of the Employer's employees authorized [sic] the Union to represent them in collective bargaining.

[2] By letter dated May 2, 1997, Respondent attempted to terminate its contractual relationship with Local 98. It is not in dispute that this attempt was untimely.

At page 18 of the same agreement is an "Individual Letter of Assent-A" in which the following language appears:

> In signing this letter of assent, the undersigned firm does hereby authorize [the association] as its collective bargaining representative for all matters contained in or pertaining to the current and any subsequent approved Inside Commercial labor agreement between [the association] and Local Union 98, IBEW.
>
> The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the NLRA Section 9(a) collective bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future job sites.

The terms "electrical work" and "electrical construction work" are not defined either in the Commercial Agreement or in the Letter of Assent. Nor is there any other definition of the work covered by the Commercial Agreement as testified to by John Dougherty, business manager for Local 98:

> Q: And is that your understanding of what is covered by this agreement…it covers more than electricity – electrical work?
> A: It covers exactly what I told you it covered.
> Q: Which includes more than electricity?
> A: Yes.
> Q: Now can you tell me where in General Counsel Exhibit 2 there is a definition of electrical work?
> A: No. There's nothing in here that explicifies [sic] a definition.
>
> Q: Is there a definition of the work that is covered?
> A: I think I already answered that no.
> Q: The answer is no?
> A: I already answered that no.

Section 2.03(c) requires an employer to notify Local 98 of all contracts secured within its jurisdiction. Section 2.03 (g) prohibits the subcontracting of "any work in connection with electrical work" to any non-IBEW signatory employer "in the jurisdiction of this or any other local union."

As to the types of employees covered by the Commercial Agreement, there is no recognitional clause per se and no clearly defined bargaining unit. Reference is made in Sections 2.01(b) and 5.02 to journeyman electricians and apprentices, and Appendix A sets forth wage rates for journeymen and apprentices. Section 5.09 refers to "electrical workers." Article VI refers to journeymen, journeymen/wiremen and apprentices. Section 2.03(a) is a 30-day union security clause which applies to "all employees." Section 3.07 provides for an employer to withhold working dues from IBEW members, not all employees. Section 2.03(d) requires the employer to furnish to the Union on a monthly basis the names of Union members employed, not the names of all employees. Section 3.04 requires the employer to make pension and benefit contributions for "all employees covered under the terms of this Agreement" calculated as a percentage of the gross labor payroll paid to "employees in the bargaining unit

represented by the Union under this Agreement." Section 3.09 authorizes a work stoppage by "electricians" should an employer fail to pay the wages and benefits provided for in the Commercial Agreement. Section 4.10 sets forth the obligations of an employer to pay travel and living expenses and to make fringe benefit contributions when an employee is required to travel from one job to another both within the jurisdiction of Local 98 and outside the jurisdiction of Local 98. The geographic jurisdiction of Local 98 is set forth in detail on the last page of the Commercial Agreement. There is no hiring hall provision.

In addition to the Letter of Assent-A contained in the Commercial Agreement, there is a second version of the Letter of Assent-A used by Local 98 which is a pre-printed form. The second version contains most of the same language as is contained on page 18 of the Commercial Agreement. In the pre-printed form, however, there is a series of blank spaces for insertion of information and accompanying explanatory footnotes. In the blank space which calls for a description of the type of work covered by the Letter of Assent, there is a footnote instruction which reads as follows:

> TYPE OF AGREEMENT. Insert type of agreement. Example: Inside, Outside Utility, Outside Commercial, Outside Telephone, Residential, Motor Shop, Tree Trimming etc. The Local Union must obtain a separate assent to each agreement the employer is assenting to.

C. *Dougherty's testimony re: Local 98's jurisdiction*

Dougherty was questioned abut the type of "electrical work" his members perform, and he testified that the work includes heating, ventilation, air conditioning (HVAC), fire alarm, all types of security, all types of telecommunications, phone, fiber, copper, land, power distribution, transformer, all types of new construction, major renovation, moves, adds and changes, satellite, CATV, fiber, high voltage installation, high voltage maintenance, high voltage testing, power distribution, power analysis, lighting, all types of AC and DC installations, remote control, wireless systems, and nurse's call.

D. *The Philadelphia Airport job*

The genesis of the dispute in this case surrounds the subcontracting of work to Respondent by Lombardo and Lipe, the primary electrical contractor on a large-scale construction project at the Philadelphia Airport. Lombardo and Lipe's employees are represented by Local 98. On May 1, 1995, Respondent was awarded a subcontract to perform telephone cabling work for Terminals B and C. Respondent was an approved certified vendor for the AT&T Systemax system used at the airport, and Respondent's CWA-represented employees had been trained and certified by AT&T to perform the work specified in the subcontracting agreement.

Stuart Kirkwood, vice president of operations, testified that at the pre-bidder's conference, Respondent was "strongly encouraged to work with Local 98 because they had a presence at the airport." Respondent consulted with the CWA and obtained the CWA's consent to use Local 98 members on the job. According to Kirkwood, without the CWA's consent, Respondent would not have bid on the job. It was resolved that the CWA members would perform the skilled work and the Local 98 members would perform the less skilled, laborer-type work such as pulling cables.

On July 12, someone in Respondent's sales office in Philadelphia faxed Kirkwood a

copy of the pre-printed Letter of Assent-A form. In the blank which called for a specification of the type of work covered by the agreement, Kirkwood typed "Inside Telephone Cable Work at Philadelphia Airport." Kirkwood also typed in the name of Local 98, Respondent's name and address, and he signed the document. Kirkwood was uncertain at the time of his testimony if he mailed the completed form back to Respondent's sales office or to Local 98. He did recall that a meeting was scheduled with Dougherty for the following week.

E. *The signing of the Letter of Assent*

Kirkwood testified that he met with Dougherty at the Union's office on July 20, 1995 for three hours. He was certain of the date and time because the appointment had been entered into his daily calendar which was introduced into evidence. Also present at the meeting were Ed Kovatch, then Respondent's director of employee relations, James Farrow, business agent for the Union, and another individual from Local 98 whose name Kirkwood could not recall. Kirkwood gave Dougherty a copy of the Letter of Assent he had filled out the week before and said: "This is what we're here to discuss, the Philadelphia Airport job, and this is the Letter of Assent that we were led to believe we have to sign." According to Kirkwood, they "discussed just…initially, just that job." The Commercial Agreement was reviewed page by page with Kovatch, after which Kirkwood and Kovatch were taken on a tour of the Union's facility. When they returned from the tour, Kirkwood was presented with a Letter of Assent with multiple carbon copies attached. In the blank space where Kirkwood had previously typed "Inside Telephone Cable Work at Philadelphia Airport" the words "Inside Commercial" appeared instead. Kirkwood remarked about the change in language and Dougherty assured Kirkwood that the Union knew which work the assent agreement referred to, but that the reference to "Inside Commercial" coincided more with the types of work specified in the footnote at the bottom of the Letter of Assent.

Kirkwood testified that the reason Kovatch attended the meeting was because Kovatch negotiated all of Respondent's labor contracts. Kirkwood and Kovatch made it clear to Dougherty and Farrow that the CWA represented Respondent's employees and that any agreement "was just for the airport project, and that we were covered by a union contract." Kirkwood told Dougherty that Respondent's CWA employees were trained and certified by AT&T to work on the Systemax system and that he could not give this work to Dougherty's men. He did assure Dougherty that he would give other work to the Local 98 members on the job. Dougherty stated that Local 98 wanted to get more involved in telecommunications work, but voiced no objection to Kirkwood's assignment of the work. He did say that he hoped that the relationship between Respondent and Local 98 could go further and that they could work together on other projects. Kirkwood told Dougherty that the Respondent could not fulfill a number of the terms contained in the Commercial Agreement and Dougherty responded that it was a "standard document, and that's how it was." Kirkwood again received "verbal assurances from …Dougherty that he knew what we were doing. He would help us try to accomplish what we [had] to at the airport." Kirkwood and Dougherty both signed the two Letters of Assent-A (the one at page 18 and the pre-printed form) and the Commercial Agreement.

Dougherty was called as a witness for the General Counsel on his case in chief and again on his rebuttal case. On his first trip to the witness stand, Dougherty testified that he met with Kirkwood a single time in May 1995 in Local 98's boardroom. Farrow was present at this meeting and a fourth person whose identity Dougherty could not recall. Dougherty was clear in his recollection that no Letter of Assent was signed by Kirkwood during this meeting. When he was shown the Letter of Assent on which Kirkwood had typed "Inside Telephone Cable Work at Philadelphia Airport," Dougherty testified that he had never seen the document before. Dougherty acknowledged that during the course of this meeting in May, Kirkwood mentioned the

fact that Respondent had a collective bargaining agreement with the CWA. According to Dougherty, it was not until two months after his face-to-face meeting with Kirkwood that Dougherty executed the Letter of Assent-A which contained the words "Inside Commercial". He could not recall how he came into possession of that document, but he was certain that he signed it in his office, alone, on July 20 and that Kirkwood's signature, also dated July 20, was already on the document. He was unable to adequately explain how Kirkwood's signature was dated July 20 since Kirkwood was not in Local 98's offices that day.

Dougherty was present in the hearing room during Kirkwood's testimony. When he was recalled to the stand as a rebuttal witness, he was asked again about the date of his meeting with Kirkwood. Dougherty testified, "I recall meeting with him, and I said it was around the time that I previously stated...in that vicinity, April, May, June, July, somewhere…prior to that job in '95." Counsel for the General Counsel then asked Dougherty if the Letter of Assent and the Commercial Agreement were signed at that meeting, and if Kirkwood's testimony had refreshed his recollection. Dougherty engaged in a discourse for four transcript pages:

> I know I signed that document on the 20th because that's the date that was on it, and I would have signed it. No, I did not sign in front of Mr. Kirkwood…And, yes, I did take them on a tour…And, no, we weren't trying to get into the communication field, much like we weren't trying to get into the electric field…And yes, in the conversation, we had some discussion about the lack of people…the educated people in the field in general and how we talked about not only the CWA being a farce, but the IBEW 1448…There was no reason for me, in this conversation, to break any rules because, to get to your point, why would I sign a one job agreement? There was no reason. I controlled the job. My contractor had…three other bids. There was four people looking at this job…I left the room…and said, here's my deal, I don't need you, either you take it or leave it. When I get back, if your signature is on it, I'll sign it and process it. Now, that's probably the way the thing developed…I take it from A to Z and tell you what our work is. I explained to Mr. Kirkwood, emphatically, that there was no need for him to do something that he was uncomfortable with because I controlled this job…So, from John Dougherty's standpoint, there was no need to have CCI sign an agreement with me…

Dougherty was asked if, during this meeting, there was any discussion about the agreement being limited to the airport job. Dougherty responded, "There might have been…from the CCI side of the table…could they just, probably, do an agreement, you know, and walk away from it, and I told them I never do them agreements." Dougherty further testified that he was unaware that Respondent had CWA-represented employees at the airport, and that it was his understanding that other than Local 98 members, the only employees Respondent employed at the airport were two or three members of IBEW Local 1448 for a couple of days. Dougherty testified that there was a Local 98 shop steward on the job, but that the steward never reported the presence of CWA employees to him.

Respondent's records establish that from July 1995 through March 1996, 20 CWA-represented employees worked 2,693.25 hours or 46 percent of the total hours worked, and 18 Local 98-represented employees worked 3,209 hours or 54 percent of the total hours worked on the airport job.

Farrow also testified as a rebuttal witness for the General Counsel. He recalled attending a meeting in 1995 at which Dougherty and Kirkwood were present. Farrow testified that Kirkwood was given an agreement to sign, but when asked whether the agreement was signed during the meeting, he testified, "not to my knowledge." When asked whether there was a discussion about limiting the assent agreement to the Philadelphia Airport job, he again testified, "not to my knowledge." Farrow corroborated Dougherty's testimony that Local 98 has never entered into a single site contract.

F. *The information request*

By letter dated January 20, 1997, Timothy Browne, a Local 98 business representative, made the following request of the Respondent:

> Please send me copies of the following in accordance with our agreement:
> 1. Copies of quarterly reports to PA Dept. of Revenue showing wages since 7/20/95.
> 2. Copies of WC2[3] reports filed since 7/20/95.
> 3. Copies of quarterly reports to the Philadelphia Dept. of Revenue showing wages paid since 7/20/95.
> 4. Copies of commercial association agreements and subassociation agreements for inside commercial work performed since 7/20/95.
> 5. List of all employees, and the hourly rate paid to each person on each job employed on all inside Commercial job sites since 7/20/95.
> 6. Copies of all weekly time and payroll records for all employees since 7/20/95 showing hours worked and hourly rates paid on each job site.
> 7. Copies of quarterly reports to the IRS since 7/20/95.

Browne explained that he had seen Respondent's trucks in the area and that the purpose of the request was to find out what jobs Respondent had within Local 98's jurisdiction. He testified that when he prepared the information request, he was of the understanding that the agreement between Respondent and Local 98 covered all of Respondent's employees employed within Local 98's jurisdiction, not just electricians, and further, that he was unaware of the collective bargaining relationship between Respondent and the CWA.

By letter dated February 5, 1997, Respondent responded to the information request by sending certified payrolls from the airport job reflecting hours worked and rates of pay. Respondent did not provide any information for any other job site. Browne testified that he looked at the payrolls and determined that the information related only to the airport job. Since the information he was requesting was for other jobs Respondent may have had within Local 98's jurisdiction, Browne did not communicate further with Respondent and filed the instant unfair labor practice charge.

[3] This was a typographical error and should have read "UC-2 reports" which are reports filed by employers in the State of Pennsylvania for unemployment claims.

IV. Analysis

A. *Applicability of the Parol Evidence Rule*

It is alleged in the complaint that Local 98 is the limited exclusive collective bargaining representative in the following unit: "journeymen electricians or apprentices performing 'inside commercial' work for Respondent within the Union's 'Geographical Jurisdictional Lines' as set forth in the [Commercial] Agreement, including Article II thereof." It is the General Counsel's position that the 1994-1997 and 1997-2000 Commercial Agreements extend to all projects of Respondent within the geographic jurisdiction of Local 98. Respondent maintains that the agreement it signed on July 20, 1995 was project specific applying only to the Philadelphia Airport.

It is not in dispute that the recognition extended to Local 98 was as an 8(f) representative and there has never been a demand by Local 98 for recognition as the 9(a) representative of any of Respondent's employees. Thus, there is no presumption regarding the scope of the unit. In the construction industry, a single employer unit will normally be deemed appropriate for the purposes of conducting an election. *John Deklewa & Sons, Inc.*, 282 NLRB 1375 (1987). Where as here there is no claim of majority status and no petition filed, the determination of the scope of the unit must be based upon a review of the contractual agreements and, if appropriate, parol evidence.

In the Commercial Agreement there is conditional language that if and when a majority of employees authorizes the Union to represent them, the employer will recognize the Union as the exclusive bargaining representative of "all employees performing electrical work". In the Letters of Assent, the same language appears except that the recognition will be extended to "all employees performing electrical construction work." The Board has previously determined that this language constitutes a continuing request by a union for 9(a) recognition and a continuing, enforceable promise by an employer to grant voluntary recognition on that basis if and when the Union demonstrates majority support. *Goodless Electric Co.*, 321 NLRB 64, 66 (1996). In this case, therefore, there is a continuing demand by Local 98 to represent those of Respondent's employees who perform either electrical work or electrical construction work. There is no evidence, however, that there has been a showing of majority support for Local 98 by any grouping of employees. Cf. *Oklahoma Installation Co.*, 325 NLRB No. 140 (1998). Thus, the units described in the Commercial Agreement and in the Letters of Assent, couched only in terms of when there is a showing of majority status, are of no assistance in determining the scope of the unit agreed to by the parties on July 20, 1995 when the 8(f) relationship was established.

The critical flaw in the Commercial Agreement is the absence of a definition of the work covered. In his brief, the General Counsel relies on the extrinsic testimony of Dougherty to describe the myriad types of work which Dougherty deems to be "electrical work". There is nothing in the four corners of the Commercial Agreement or the Letters of Assent, however, that sets forth the types of work testified to by Dougherty. The General Counsel strenuously argues against consideration of extrinsic evidence to resolve the issue of whether these agreements were project specific, but relies on extrinsic evidence, specifically Dougherty's testimony, to define the scope of the work. It cannot reasonably be argued that extrinsic evidence should be considered for the purpose of defining the scope of the work covered by the Commercial Agreement, but should not be considered in determining whether the agreements were project specific. Indeed, the two issues go hand in hand. Resolution of the issue of the scope of the work in this case necessarily resolves the issue of whether the agreement was project specific.

In addition to the absence of any definition of work covered by the Commercial Agreement, there is no recognition clause defining the specific job classifications covered by the agreement. Most of the provisions of the Commercial Agreement refer to journeymen and apprentice electricians. However, the 30-union security clause applies to "all employees" of Respondent. In the absence of an exclusive hiring hall provision, the union security clause presumably extends to all employees of Respondent, including those represented by the CWA. This is inconsistent with the balance of the agreement which appears to apply only to members of Local 98.[4]

This case is distinguishable from the Board's recent decision in *Sommerville Construction Co.*, 327 NLRB No.99 (1999). In *Sommerville*, a non-union contractor signed an agreement with the Bricklayers recognizing the union "as the sole and exclusive collective bargaining representative for and on behalf of the employees of the employer now or hereinafter employed within the territorial or occupational jurisdictions of the union." The Board affirmed Judge Gross' view that this clear recognitional language belied any suggestion that the parties intended only a single-project agreement. In *Cowboy Scaffolding, Inc.*, 326 NLRB No.87 (1998) relied on by the General Counsel in this case, the bargaining unit was defined by specific types of employees performing work within a defined geographic area. In rejecting the employer's argument that the agreement was project specific, the Board concluded that the language of the collective bargaining was plain and unambiguous and extended to all projects of the employer for the life of the agreement. Significantly, the Board considered the conduct of the parties at and after the signing of the agreement to conclude that nothing therein cast doubt as to the intentions of the parties as embodied in the collective bargaining agreement.

I further reject as unsupported the General Counsel's suggestion that the Board has previously determined that Letters of Assent used by IBEW locals bind each and every signatory employer to a term agreement rather than a project specific agreement. There is no question that Letters of Assent used by the IBEW have been determined to be effective in binding signatory employers to applicable association collective bargaining agreements. *Reliable Electric Co.*, 286 NLRB 834 fn.5 (1987). Respondent concedes that it is bound to the Commercial Agreement by virtue of executing the Letters of Assent. Respondent's challenge is not to the enforceability of the Letters of Assent but to the ambiguity in the terms of the Commercial Agreement itself. None of the cases cited by the General Counsel and the Union discuss agreements negotiated between Local 98 and the Penn-Del-Jersey chapter of NECA. Each cited case involved different IBEW locals and different chapters of NECA. *Kirkpatrick Electric Co., Inc.*, 314 NLRB 1047 (1994) (IBEW Local 136 and Birmingham Division, Central Mississippi Chapter); *Bufco Corp.*, 291 NLRB 1015 (1988)(IBEW Local 16 and Evansville Division, Southern Indiana Chapter); *Electrical Workers IBEW Local 532 (Brink Construction)*, 291 NLRB 437 (1988)(IBEW Local 532 and NECA-Western); *Stack Electric*, 290 NLRB 575 (1988)(IBEW Locals 110 and 292 and the Minneapolis and St. Paul Chapters); *City Electric, Inc.*, 288 NLRB 443 (1988)(Local 1317 and Laurel Division, Central Mississippi Chapter); *Reliable Electric Co.*, 286 NLRB 834 (1987)(IBEW Local 68 and the Rocky Mountain Chapter); *The Leapley Co.*, 278 NLRB 981 (1986)(IBEW Local 26 and Washington D.C. Chapter); *Watt Electric Co.*, 273 NLRB 655 (1984)(IBEW Local 584 and Eastern Oklahoma Chapter); *Hayden Electric, Inc.,* 256 NLRB 601 (1981)(IBEW Local 728 and Florida East Coast Chapter); *Nelson*

[4] The testimony of the General Counsel's witnesses on this point is equally ambiguous. The appropriate unit alleged in the complaint is limited to journeymen and apprentice electricians. Browne testified that he believed the unit consisted of all of Respondent's employees. Dougherty similarly testified that he believed Local 98 represented all of Respondent's employees on the job site.

Electric, 241 NLRB 545(1979)(IBEW Local 669 and Western Ohio Chapter). Thus, the General Counsel and Charging Party's prediction that a successful challenge by the Respondent to the validity of the Commercial Agreement in this case would have nationwide implications and would serve to undermine the entire construction industry is just so much saber rattling.

The parol evidence rule is a rule of substantive law which requires that when parties have made a contract and have expressed it in a writing to which they have all assented as the complete and accurate integration of that contract, evidence of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing. Although evidence outside the agreement may not be introduced to vary its terms, evidence may be introduced for the purpose of ascertaining the correct interpretation of the agreement. *Southern California Edison Co.,* 295 NLRB 203, 218 (1989), petition for review denied 927 F.2d 635 (D.C. Cir. 1991); *Inter-Lakes Engineering Co.,* 217 NLRB 148 (1975). Where sufficient ambiguity exists in the language of the document itself, extrinsic evidence is properly resorted to determine the agreement's meaning. *Sansla, Inc.*, 323 NLRB 107 (1997); *Operating Engineers Local 3 (Joy Engineering)*, 313 NLRB 25 fn.2 (1993). I find that such ambiguity exists in this case because of the lack of any definition of the work covered by the agreement and because of the conflicting references as to whether the agreement covers all employees or just members of Local 98. It is therefore appropriate to consider extrinsic evidence to resolve the issue of whether this Commercial Agreement was a term agreement or project specific.

B. *The Extrinsic Evidence*

Dougherty testified with certainty on direct examination that the only meeting he ever had with Kirkwood was in May 1995 and that the Letter of Assent was not signed during the course of that meeting. Dougherty insisted that he signed the Letter of Assent when he was alone in his office on July 20. After Kirkwood credibly testified that his three-hour meeting with Dougherty took place on July 20, and after he produced his written diary corroborating that fact, Dougherty testified with equal certainty on rebuttal that he signed the agreement on July 20 during the course of his meeting with Kirkwood. In an effort to rehabilitate his witness, the General Counsel asked Dougherty a simple question, that is, if Kirkwood's testimony had refreshed Dougherty's recollection about the meeting. His answer was anything but simple, but nonetheless revealing. In a rambling discourse, Dougherty boasted that there was no reason for him to sign a single project agreement because he "controlled the job" and that he told Kirkwood on July 20 "here's my deal. I don't need you, either you take it or leave it." He explained "from John Dougherty's standpoint, there was no need to have CCI sign an agreement…" Of course, that was not the case, as an examination of the chronology of events demonstrates.

Respondent had been awarded the subcontract from Lombardo & Lipe on May 1, at a time when Respondent had no relationship with Local 98. On July 20, Respondent had an executed subcontracting agreement in hand and a unionized workforce certified to perform the work involved. Moreover, Kirkwood had the consent of the CWA to share the airport work with Local 98. The consent was limited to the airport job and I credit Kirkwood's testimony that absent that consent, he would not have entered into the subcontract with Lombardo & Lipe. The sum of this evidence shows that it was Respondent, not Local 98, who was in control and that the only reason Respondent agreed to sign any agreement with Local 98 was at the request of Lombardo & Lipe to ensure labor peace. Confronted with these realities, it was in Dougherty's interest to sign an agreement, even one limited to a specific project, so as to be able to demonstrate to Respondent that his members were as qualified as CWA members to perform telecommunications work. The longstanding efforts of Local 98 to have its members perform telecommunications work is well documented, *Electrical Workers IBEW Local 98 (The*

Telephone Man), 327 NLRB No. 113 (1999); *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 226 (1997); *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997), and this was the setting in which the July 20 meeting took place.

Kirkwood's recitation of the events of July 20 was credible, plausible and consistent with the other evidence in the case. I credit Kirkwood's testimony that he made clear to Dougherty and Farrow that the CWA represented Respondent's employees and that any agreement would have to be limited to the airport job. Dougherty admitted in his rebuttal testimony that that there "might have been" a discussion about limiting the agreement to just the airport job, although he claimed to have rejected the idea. I further credit Kirkwood's testimony that he told Dougherty that he would divide the work between the CWA employees who were certified on the Systemax system and the Local 98 employees who were not. Dougherty voiced no objection and told Kirkwood that Local 98 wanted to get more involved in telecommunications work and that he hoped they could work together on future projects. Thus it is clear that Dougherty was willing to have a limited presence with Respondent at the airport job in order to achieve his long term goal of having his members perform telecommunications work in the Philadelphia area.

I discredit Farrow's testimony which was not only contradictory of Kirkwood's credible testimony, but contradictory of Dougherty's testimony as well. On rebuttal, Dougherty admitted that the Letters of Assent and the Commercial Agreement were signed during the course of the July 20 meeting. Farrow testified that to his knowledge they were not signed during the meeting. Dougherty admitted that there was discussion about a project specific agreement and Farrow testified that there was no such discussion. The inconsistencies between the General Counsel's witnesses further lead me to conclude that they are not credible in their recollection of the events of July 20, 1995.

The events following the July 20 meeting further corroborate Kirkwood's testimony. When work commenced at the airport, Respondent's workforce was divided roughly in half between members of the CWA and members of Local 98. I reject as a complete fabrication Dougherty's testimony that he was unaware of the presence of CWA employees at the site. Local 98 had a steward at the job and obviously observed the 20 CWA members working side-by-side with the 18 Local 98 members. At no time did Local 98 object to the CWA's presence, file a grievance, or take any other adverse action.

For all of these reasons, I conclude the agreement entered into by the Respondent and Local 98 on July 20, 1995 was a single project agreement limited to the Philadelphia Airport.

C. *The Request for Information*

Since the agreement between Respondent and Local 98 was limited to the airport job, Respondent's obligation to provide relevant information to the Union was similarly limited. The purpose of the Union's information request was to ascertain Respondent's presence at other job sites. As such the request sought irrelevant information and the Respondent's failure to provide the information did not violate the Act.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The complaint is dismissed.

Dated, Washington, D.C.

Margaret M. Kern
Administrative Law Judge

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.